# Chapter 12
# Gender Integration in Sex-Segregated U.S. Prisons: The Paradox of Transgender Correctional Policy

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**Abstract** In the latter part of the twentieth century, the development of correctional policies in the United States related to transgender prisoners has rendered visible *trans*gender prisoners, disrupted the taken-for-granted policies and practices related to the operation of sex-segregated prisons, and presented considerable challenges to those charged with running penal institutions. The courts and correctional administrators in particular have grappled with how best to adjudicate tensions born of the visible presence of transgender prisoners in prisons charged with housing men (and only men). We draw on multiple sources of data, including correctional policies, published surveys, court opinions, activist testimony, news documents, and legal discourse, to analyze the parameters of extant transgender correctional policy in the U.S. Our examination reveals that transgender correctional policy is: shaped by "safety and security" concerns, arguably the central institutional logic underlying the management of prisons; unsettled insofar as there is both convergence and divergence in the content of policy related to transgender inmates (e.g., there is almost complete agreement on the enforcement of anatomy-based housing policies and there is considerable disagreement over policies related to hormonal treatment); and attentive to the control of place for transgender prisoners, although not comparable control of "presentation and demeanor" for transgender prisoners. A collateral consequence of these features of correctional policy is that prisons for men in the U.S. are at once sex-segregated and multi-gendered.

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## Introduction

In 2011, the Cook County jail in Chicago, Illinois adopted a policy that made national news. The policy establishes guidelines and procedures for managing the custody, safety, and security of transgender inmates (Hawkins 2011). Prior to the adoption of this new policy, transgender inmates in the Cook County jail were treated as members of the gender that aligned with their sex at birth. Inmates with male genitalia were treated as males. End of discussion. In sharp contrast, the new policy specifies that transgender inmates can be housed, dressed, and searched according to their gender identity rather than the sex/gender they were assigned at birth; a Gender Identity Committee is charged with considering the case of each inmate who self-identifies as transgender or who is clinically verified as being transgender, recommending appropriate housing accommodations for the inmate, and specifying what clothes and toiletries transgender inmates should have, as well as how officers can (and cannot) search transgender inmates. As a result of this new policy, both men's and women's facilities are now options for housing transgender inmates.

This historic shift in the policy is informed by, and reflects, a new era. It is an era in which *Newsweek* introduced "transgender America" in a cover story (Rosenberg 2007), researchers have directed scholarly attention to the plight of transgender prisoners (Jenness et al. 2010; Sexton et al. 2010), advocates have brought newfound attention to the problematic nature of being a transgender prisoner (Just Detention International 2009; Transgender Law Center n.d.; Transgender Law and Policy Institute 2009), and those charged with administering jails, prisons, and other detention facilities have been challenged to develop policies and procedures that are more attentive to transgender prisoners. It is an era in which law and policy that addresses the treatment of transgender prisoners is being designed, adopted, and institutionalized across the U.S.

The development and institutionalization of law and policy that addresses the management of transgender prisoners calls into question one of the most basic underlying assumptions of prison operations: segregation by sex, with sex meaning male and female and only male and female. Prison systems constitute one of—if not the—most sex-segregated institutions in the modern world. For well over a century in the U.S., there have generally been two types of prisons: men's prisons and women's prisons (Britton 2003; Rafter 1985).[1] Historically, early moves

[1] A co-corrections experiment in the U.S. in the 1970s and 1980s, however, led to sex-integration in some federal and state facilities (Herbert 1985; Johnson 1987; Mahan et al. 1989).

toward sex segregation were sought in order to increase the safety of female inmates and to provide opportunities for "gender-appropriate" punishment and rehabilitative programming (Britton 2003). Sex segregation presumed gender segregation. The same assumption is in place in the modern era: sex segregation in prison and other carceral environments is arguably the least contested prison policy/practice across geographical region, local government, and type of detention facility.

The visible presence of transgender prisoners has problematized the taken-for-granted status of sex-segregated prisons, jails, and other detention facilities as a routine policy commitment and operational practice. Their visibility presents operational challenges and raises human rights questions (Arkles 2009; Emmer et al. 2011; Mann 2006; Peek 2003–2004; Rosenblum 1999–2000; Sylvia Rivera Law Project 2007; Tarzwell 2006–2007). The political work sustained by transgender prisoners, former prisoners, and their advocates has provided a catalyst for newfound critiques of the prison as a "gendered organization" (Acker 1990; Britton 2003). As with other gendered organizations, prisons are predicated on a slew of assumptions about sex and gender as well as the essential features of both. This is perhaps most evident in prison operational policies that link legislative mandates to correctional obligations, reflect the institutional logic and values of corrections, and guide the daily operations of prisons.

Prison policies that address inmate management often appear on the surface to be "gender-neutral," but they nonetheless clearly reflect and inform the social organization of a binary sex/gender system. As we describe in this chapter, prison policies that instruct officials on the management of transgender prisoners make assumptions about the social organization of gender, determine how gender is (and is not) revealed in social life, identify categorical divides that are (and are not) recognized, and mandate how both sex assignment and gender displays are to be managed institutionally. For example, housing policies generally require that inmates fit into one of two sex categories; medical policies prohibit sex reassignment and hormonal treatment unless a prisoner is pathologized via psychiatric diagnosis (i.e., gender identity disorder or gender dysphoria); and policies on clothing, cosmetics, and hygiene delineate the acceptable "GP" (general presentation) of prisoners. These types of policies constitute an emergent policy domain worthy of empirical examination.

Our analysis of these policies is situated in the larger context in which they have emerged and in which they reveal a paradox. These policies have taken shape within a new penology and culture of control (Feeley and Simon 1992; Garland 2001), a judicial and political context of "deference" toward corrections administrators and operations (Feeley and Rubin 1998; Jenness and Smyth 2011), and a correctional context that prioritizes safety and security (Gaes et al. 2004). Shaped by this context, correctional policies related to the management of transgender inmates: both affirm and interrogate the taken-for-granted assumptions about the intersection between gender and penality; manifest considerable dissensus among existing policies regarding some issues (e.g., hormonal treatment) and near consensus regarding other policy issues (e.g., anatomy-based housing); and, as

revealed in our analysis, structure prisons that are both sex-segregated and gender-integrated.

The remainder of this chapter is organized around four major sections. In the next section, we briefly describe the correctional climate in which policies related to transgender prisoners have emerged and taken form. Thereafter, we describe the methods and data used for our analysis of transgender correctional policies and legal and public discourse surrounding those policies. In the main section of this chapter, we present an analysis of transgender policies by focusing on the key elements of policy: defining transgender, accessing medical care, determining housing, and displaying gender. We conclude with a discussion of our key empirical findings and theoretical implications.

## Setting the Stage for Transgender Policy

Policy does not emerge and take form in a vacuum; rather, it is contextualized by the environment in which it comes into being, including the institutional logics that characterize that environment. Accordingly, below we describe key features of the environment that shape transgender correctional policy.

### *The New Penology and a Culture of Control*

The consideration of transgender inmates as a policy concern emerged in the later part of the twentieth century, at the time when the so-called "new penology" (Feeley and Simon 1992) and a "culture of control" (Garland 2001) began to characterize the correctional landscape. The new penology is characterized by changes in discourse, policy, and practice toward probability and risk in contrast to individual treatment, reform, and punishment; new system objectives toward efficient control; and a reliance on actuarial techniques that privilege the aggregate over the individual (Feeley and Simon 1992; c.f. Lynch 1998). This change was accompanied by decreased expectations for criminal justice agencies to engage in rehabilitation as they began to use internal system measures as evaluative performance indicators instead of relying on externally imposed social goals, such as public safety and community reintegration. The result limits the potential to achieve objectives beyond those associated with operations. As Moynihan (2005) and others have pointed out, this correctional climate is coupled with a larger move in government toward an emphasis on measurable results, often referred to as performance metrics.

In *The Culture of Control*, David Garland (2001) offers a historical account of the emergence of the contemporary field of crime control in the U.S. and the U.K. that focuses attention on central discourses, strategies, and policies of crime

control. He develops a critical understanding of the practices and discourses of crime control—what he calls "the field of crime control and criminal justice" (p. 72)—that have come to characterize the U.S. and the U.K. by directing attention to a wider field that encompasses the practices of non-state as well as state actors and forms of crime control that are preventative as well as penal. This includes a shift from differentiated crime control systems monopolized by the state to a de-differentiated system involving state and non-state partnerships. As others have discussed, this, in turn, has opened institutional space for outside stakeholders—indeed, entire policy communities—to make claims about the legitimacy of operational aspects of law enforcement in general and corrections in particular (Ismaili 2006; Pratt et al. 1998).

## *Legitimacy and the Centrality of Safety and Security in Organizational Policy*

The relationship between organizations, policies, and legitimacy has been revealed in a large body of scholarship spanning over three decades (Edelman 1992; Grattet and Jenness 2005; Jenness and Grattet 2005; Meyer and Rowan 1978). This work reveals the important role institutionalized values and "myths" play in an organization's ability to achieve legitimacy quite apart from technical efficiency and that an organization's legitimacy derives from its ability to instill these myths into its formal organizational structure, policies, and technical activities (Meyer and Rowan 1977). Myths might appear incompatible with a correctional climate that privileges technical efficiency, but not if technical efficiency is the centerpiece of the institutionalized values.

As Pratt et al. (1998) reveal, there are various sovereigns that compete for ownership of the correctional "problem." Sovereigns are those who are most influential with regard to the allocation of organizational resources and whose decisions "formally or informally hold the organization to institutionalized standards of policy and performance" (Jenness and Grattet 2005, p. 343). Sovereigns relevant to state prisons include legislators, the judiciary, taxpayers, external oversight organizations, and correctional employee labor unions. In the case of transgender policies, transgender advocates in particular, and LGBT advocates more generally, are also easily recognized as stakeholders.

Organizational legitimacy is a product of the relationship between the organization and entities well positioned to judge the organization, including its policies as formal expressions of organizational values and intended practices. Framed in this way, the study of the development of a policy domain is imperative precisely because it speaks to the legitimation of some values over others. As others have shown, the adoption of policies is often a function of what Maxson and Klein (1997) refer to as "philosophic resonance." According to them, philosophic resonance is "the degree to which legislation is in agreement with the underlying

philosophies of those meant to carry out the legislation" (Maxson and Klein 1997, p. 23; see also, Jenness and Grattet 2005).[2]

Given this work, it is reasonable to understand prison policies as a reflection of organizational responses to externalities that align with organizational culture and mission. Organizational culture can be understood as a mediating variable that shapes the relationship between external stakeholders/sovereigns and the development and adoption of operational policies. As such, prison policies can be seen as codified value statements that reveal the underlying logics and attendant expressed commitments of correctional systems.

In simple terms, correctional mission statements "articulate the [public and formal] purpose of imprisonment within a jurisdiction" (Gaes et al. 2004, p. 8). In their survey of mission statements of state departments of corrections in the U.S., the Federal Bureau of Prisons, and the Correctional Service of Canada, Gaes et al. (2004, p. 9) identify themes found across department "missions, vision, or core value statements." "Guaranteeing the safety of the public, staff, and inmates" (96.2 % of the jurisdictions) emerges as *the* central organizational value. Rehabilitative and inmate treatment goals are evident in organizational philosophies, albeit to a lesser degree.

Findings by Moynihan (2005) reveal that, in practice, some departments of corrections may be unable to pursue multiple goals, effectively rendering the top priority an exclusive value and attendant objective. "[T]he critical logic that shaped their management activities was coping to maintain the simple warehousing goal of incarcerating many prisoners in a limited space for low costs, while maintaining reasonable safety and constitutionally acceptable conditions" (Moynihan 2005, pp. 23–24). In other words, safety and security can be seen as the central organizing principle of correctional systems in the U.S.

It is within this context that we now turn to an examination of policies related to transgender prisoners housed in U.S. prisons. We do so by examining a range of policies—from those that speak to how transgender is defined to those that address hair care—for what they can reveal about the social organization of gender in carceral spaces defined by the culture of control, the new penology, and a resulting core value of safety and security in correctional settings. As Jenness and Grattet (2005), as well as others, have persuasively argued, policies are important points of departure for empirical analysis because they link legislative and judicial mandates to organizational operations, shape the practices of organizational personnel, and provide a window through which the stated goals and practices of agencies and personnel can be empirically documented and assessed.

[2] Extending this argument, Jenness and Grattet (2005; see also Jenness and Smyth 2011) found that "organizational perviousness," which refers to "both the organization's susceptibility to environmental influence and the degree to which a particular innovation aligns with the local agency's existing culture and practices" (p. 355), predicts the adoption of law enforcement policies.

## Data and Method of Analysis

We collected several forms of archival data in order to examine the broad terrain of transgender correctional policy development and discourse. Our primary focus is on policy documents and judicial decisions, with a secondary focus on materials from advocacy organizations (e.g., reports, newsletters, press releases) and news media. We supplemented these materials with published surveys of transgender correctional polices and legal scholarly discourse presented in published law review journal articles. These materials were retrieved through searching Lexis Nexis Academic, Sociological and Criminal Justice Abstracts, and other public internet search engines (e.g., Google). Search terms included all variations and combinations of the following: transgender, transsexual, corrections, inmate, policy, jail, and prison.

Our examination of these documents allowed us to identify broad themes that anchor transgender correctional policy as well as key stakeholders associated with transgender correctional policy discourse. Throughout our analysis, we examined the correctional policies of one state in depth—those of the California Department of Corrections and Rehabilitation (CDCR). We did so because California is home to over 300 transgender inmates in prisons for men (Jenness et al. 2011). Assuming Browne and McDuffie's (2009) recent estimate—that there are approximately 750 transgender prisoners in the U.S.—is correct, California is home to nearly half of all transgender prisoners in the U.S. With this in mind, we collected the two central CDCR policy manuals (i.e., Department Operations Manual and the Title XV) and conducted searches using the following terms: female, male, sex, gender, trans, feminine, effeminate, and masculine.

## Transgender Correctional Policy in the United States

Over the last few decades there has been a proliferation of correctional policies that focus on the management of transgender prisoners. Brown and McDuffie (2009) recently requested all policies and directives related to the management and/or treatment of transgender inmates from U.S. state Departments of Corrections, the Federal Bureau of Prisons, and the District of Columbia. Of those who responded (46 out of 52 jurisdictions), 27 jurisdictions provided policies, directives, or memos. This is a significant increase both in the response rate and the number of existing policies from prior efforts to gauge the growth of transgender polices and the content of such policies. For example, after seeking to retrieve all formal and informal prison policies addressing the management of transgender inmates, Tarzwell (2006–2007) identified only eight states with written policies of some kind (although over half of the states were unresponsive). Prior to that, Petersen et al. (1996) found that 20 % of jurisdictions responding to their survey (including systems in North America, Australia, and Europe) had formal policies.

Consistent with this pattern, Brown and McDuffie (2009) report that the first policies were adopted in 1993, and 70 % of current policies and directives were developed (or at least revised) recently (between 2002 and 2007). The result is a body of policy that speaks to a host of issues, the most prominent of which are addressed below.

## *Defining Transgender*

What *transgender* means and who counts as transgender varies immensely outside of prison. Broad definitions consider "transgender" an umbrella term for many variations of gender identity and expression. For example, a recently released report titled *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* defined transgender broadly to include "those who transition from one gender to another (transsexuals), *and* those who may not, including gender queer people, cross-dressers, the androgynous, and those whose gender non-conformity is part of their identity" (Grant et al. 2011, p. 12, emphasis in original). Activists attentive to law and policy also tend to err on the side of over-inclusion such that transgender people may be "pre-operative, post-operative, and non-operative transsexual people; cross-dressers; feminine men and masculine women; and more generally, anyone whose gender identity or expression differs from conventional expectations of masculinity or femininity" (Transgender Law and Policy Institute 2009). Likewise, researchers use transgender as an umbrella term for those "who live outside of normative sex/gender relations—that is, individuals whose gendered self-presentation (evidenced through dress, mannerisms, and even physiology) does not correspond to the behaviors habitually associated with members of their biological sex" (Namaste 2000, p. 1; see also Forbes, this volume, for a discussion of how "sex" has been legally defined).[3] Thus, depending on the perspective, transgender includes a variety of types of people, sensibilities, and ways of being in the world.[4]

Medical definitions, however, often narrow these broad understandings of "transgender." As the lead California medical doctor for transgender clients in California prisons stated in a presentation she gave to the medical community: "Transgender refers to a person who is born with the genetic traits of one gender but the internalized identity of another gender" (Kohler 2005, n.p.). And still more

[3] Putting forth one of the most expansive definitions of transgender, historian Susan Stryker (2008, p. 1, emphasis in original) uses the term transgender to refer to: "People who move away from the gender they were assigned at birth, people who cross over (*trans-*) the boundaries constructed by their culture to define and contain that gender…it is *the movement across a socially imposed boundary away from an unchosen starting* place—rather than any particular destination or mode of transition."

[4] For a discussion of variability along these lines among transgender prisoners in California prisons, see Jenness et al. (2014).

specific: until recently, transgender people were those diagnosed with gender identity disorder (GID) as it was written in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition* (2000) (DSM-IV-TR). The DSM-V, just released in 2013, however, includes a significant change in which *gender dysphoria* replaces *gender identity disorder* (Moran 2013). In this case, the change signals an effort to remove the stigma associated with the prior diagnosis while still providing an avenue for treatment. While debates continue regarding the costs and benefits of the current role of the medical field in transgender lives, currently in the United States a person is usually required to be diagnosed with GID (and, presumably soon, gender dysphoria) before he or she can begin hormonal treatments or pursue sex reassignment surgery (Stryker 2008; see also Alexander and Meshelemiah 2010; Brown and McDuffie 2009). Thus, perhaps it is not surprising that medical definitions prevail in arenas of correctional policy.

Corrections departments frequently rely on medical definitions to define who is and is not transgender in their formal policies. In general, among the policies that exist, clinical language is usually explicit in the criteria for determining who is (and is not) transgender. Most of these cover those who are diagnosed with gender identity disorder as specified by DSM-IV (Brown and McDuffie 2009; Tarzwell 2006–2007). The Illinois policy, unique among the group with a focus on an inmate's gender over a diagnosis of a disorder, specifies that it does not include "homosexuals, transvestites, and cross-dressers" (Tarzwell 2006–2007, p. 207). Even more telling, committees charged with this determination consist primarily of medical and mental health staff. Finally, almost three quarters (74 %) of the reporting jurisdictions in the most recent survey include formal policies that specify a "psychiatric evaluation of inmates who claim to have symptoms consistent with a GID" (Brown and McDuffie 2009, p. 286).

With regard to the use of medical definitions, case law and correctional policies align. For example, in the precedent setting case, *Farmer v. Brennan* (1994), the Supreme Court cited the American Medical Association's Encyclopedia of Medicine and the DSM-III in its statement of what it means to be a "transsexual." In the opinion for the case, Justice Souter accepted, without questioning, the BOP's diagnosis that Brennan fit this definition as someone who has a "rare psychiatric disorder in which a person feels persistently uncomfortable about his or her anatomical sex and who typically seeks medical treatment, including hormonal therapy and surgery, to bring about a permanent sex change" (*Farmer v. Brennan* 1994, p. 829).

A few years later, in *Maggert v. Hanks* (1997), Judge Posner of the U.S. Court of Appeals for the 7th Circuit, also relied upon medical definitions. He cites the *American Medical Association Encyclopedia of Medicine* as well as the *Lawyers' Medical Cyclopedia of Personal Injuries and Allied Specialties* to conclude that:

> Gender dysphoria—the condition in which a person believes that he is imprisoned in a body of the wrong sex, that though biologically a male (the more common form of the condition) he is "really" a female—is a serious psychiatric disorder, as we know because the people afflicted by it will go to great lengths to cure it if they can afford the cure. The cure for the male transsexual consists not of psychiatric treatment designed to make the

> patient content with his biological sexual identity—that doesn't work—but of estrogen therapy designed to create the secondary sexual characteristics of a woman followed by the surgical removal of the genitals and the construction of a vagina-substitute out of penile tissue…Someone eager to undergo this mutilation is plainly suffering from a profound psychiatric disorder (*Maggert v. Hanks* 1997, p. 671).

Some have argued that the deployment of medical definitions narrows the "eligible" group of transgender inmates significantly, which results in a denial of a variety of treatment benefits (when they do exist) for a large group of gender variant inmates (Peek 2003–2004; Rosenblum 1999–2000). The case of *Long v. Nix* (1995) reveals how a reliance on medical terminology excludes particular groups of inmates in practice. In brief, plaintiff Long sought to wear women's clothing in a men's facility. However, Long refused psychiatric treatment for gender identity disorder. As a result, the court pointed to distinctions made during expert testimony between "transvestic fetishism" and "gender identity disorder" and concluded that the "extent of Long's gender identity disorder does not constitute a serious medical need" (*Long v. Nix* 1995, p. 1365). Other arguments against the medical model point to the idea that the medicalization of gender identity "pathologizes and thus stigmatizes trans people" and "reinforces the oppressive gender binary" (see Lee's 2008 review of these arguments, p. 457; Rosenblum 1999–2000). A recent exception to these critiques, however, is presented by Lee (2008) who argues that transgender inmates are often seeking medical care and "it is difficult to imagine how one could engage in effective advocacy for access to medicine without resorting to the use of some sort of medical evidence" (p. 469).

Despite the use of relatively clear-cut medical definitions, correctional policies often conflate sexuality and gender. For example, in the Department Operations Manual for the California Department of Corrections and Rehabilitation (CDCR), the policies relevant to transgender prisoners make reference to those who have "gender dysphoria" in the chapter on health care services *and* later include pre-operative transsexuals among a group classified as "effeminate homosexuals" in the chapter on classification. A selection from the California policies reads:

> **Medical Services: Gender Dysphoria Treatment**
>
> Genetically, male inmates who may have problems of gender dysphoria (an emotional state characterized by anxiety, depression, etc.) may be referred for evaluation and possible treatment to the gender identification unit at CMF.[5] Genetically, female inmates with analogous problems shall be referred to the CMO at CIW[6] (CDCR Operations Manual 2010, Section 91020.26, p. 774).

Although reportedly no longer in place in practice, historically the CDCR classified "effeminate homosexuals" as:

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[5] CMF refers to California Medical Facility, a California state prison for men that historically housed inmates with unique medical needs.

[6] CMO refers to the Chief Medical Officer and CIW refers to California Institution for Women.

> Male inmates who are preoperative transsexuals, or active effeminate homosexuals whose appearance and personality make them incompatible with general population housing shall be presented to a CSR[7] for placement in Category "B".… Inmates shall not be placed in Category "B" solely on the basis of sexual preference or feminine traits nor remain in Category "B" longer than their appearance and conduct makes necessary.
>
> [T]his category is provided only at CMF and is intended to provide safe, supportive housing for those likely to be easy victims of sexual assault as well as to avoid the conflict and disruption their presence would create in a general population institution (CDCR Operations Manual 2010, Section 62080.14, p. 575).[8]

Interestingly, "Cat B" prisoners are described as "active effeminate homosexuals" even as the policy includes an instruction not to place inmates in this category based on "sexual preference or feminine traits." These policies suggest that when medical treatment is implicated, the CDCR considers the group of prisoners distinct from "homosexuals"; but when medical treatment is not implicated, this group of prisoners is included as part of the population of inmates seen as vulnerable, "effeminate homosexuals," and thus managed in comparable ways (see also Arkles 2009, footnote 13; Jenness 2011).

In sum, there is considerable convergence among policies with regard to the categorization of this group of prisoners. Correctional policies most often define "transgender" consistent with medical definitions, which presumably facilitates continued sorting and screening according to concrete terms. The courts have repeatedly adopted this approach.

## *Accessing Medical Care*

Given the reliance on medical definitions for understandings of "transgender," it is not surprising that medical concerns dominate correctional policy considerations for this group of prisoners. In large part, medical concerns are expressed in the context of lawsuits in which plaintiffs have argued that lack of medical treatment related to transgender health care is a violation of Eighth Amendment protections against cruel and unusual punishment (Mann 2006; Rosenblum 1999–2000). Indeed, as mentioned earlier, some have argued that the outcomes of many of these cases reveal that transgender inmates have a vested interest in the perpetuation of transgenderism as a medical issue in a correctional setting (Lee 2008).

The courts generally use "serious medical need" (see *Meriwether v. Faulkner* 1987) as a standard for whether or not the GID requires treatment (see *Kosilek v. Maloney* 2002) and occasionally require that hormonal treatment be provided (see

[7] CSR refers to Classification Staff Representative.

[8] Although this policy is no longer in practice, this delineation itself is fairly recent. Archival documents in the form of administrator and manager meeting minutes reveal that, as in the larger medical world, homosexuals were "treated" as medical cases 60 years ago (California Department of Corrections 1948).

*Phillips v. Michigan Department of Corrections* 1990). Recently in Wisconsin, a U.S. District Court found state legislation against hormonal treatment for transgender inmates to be a violation of the Eighth and Fourteenth Amendments (*Fields v. Smith* 2010). These patterns are at least partly due to cases that point to severe withdrawal symptoms as a result of discontinuing hormone treatment already underway (*Meriwether v. Faulkner* 1987). The decision in *Meriwether v. Faulkner* (1987), however, did not specify what kind of treatment needed to be provided; rather, it simply specifies that "some kind of treatment" be available. The Wisconsin ruling can be interpreted similarly (*Fields v. Smith* 2010).

In general, when hormones are provided to transgender inmates in U.S. correctional facilities, treatment strategies follow a "continuation" program in which hormones can be prescribed (and either maintained or furthered) if the inmate can prove hormone treatment was underway prior to incarceration (Brown and McDuffie 2009). Over 80 % of the jurisdictions with formal policies include this approach as a possibility. For eight of those it is at least possible that the approach is a maintenance or "freeze-frame" treatment program. This means that hormones are maintained at the same level of treatment upon admission. Until recently, this was also the policy of the Federal Bureau of Prisons (BOP). In 2011, however, the federal system changed its policy on hormonal treatment to allow consideration on a case-by-case basis (National Center for Lesbian Rights 2011). This means that inmates who had not previously undergone hormonal treatment in the community could potentially initiate treatment while incarcerated in the BOP. States without written policies do not tend to provide hormone therapy (Tarzwell 2006–2007), and some states continue to debate the parameters of hormone delivery.

The continuation and maintenance/freeze-frame policies usually require that the inmates provide proof of prior hormone treatment via medical records prior to incarceration (Brown and McDuffie 2009). Many argue that this is not consistent with the lives of transgender inmates who move from the street to carceral settings and back to the street (see Sexton et al. 2010) and is, therefore, an inaccurate measure of who is undergoing hormonal treatment at the time of incarceration (Rosenblum 1999–2000; Sylvia Rivera Law Project 2007). A large number of transgender inmates obtain hormones on the "underground market" and cannot provide formal documentation; these policies, thus, arguably discriminate against low-income transgender people who are unable to obtain formal health care that would provide this level of documentation (see Lee's 2008 review of these arguments). Other challenges arise even when hormonal treatments are provided because correctional facilities often do not provide accompanying psychological and medical services.

The most consistent policy for transgender prisoners across the United States (both in terms of medical care and otherwise) has been that sex reassignment surgery is not permitted while the inmate is in prison, even if paid for personally by the inmate (Brown and McDuffie 2009). For example, in the CDCR's Department Operations Manual, the chapter on "Medical Services" indicates that "genetically male inmates who may have problems of gender dysphoria" should be evaluated for possible treatment while in prison, but that "[i]mplementation of

surgical castration, vaginoplasty, or other such procedures shall be deferred beyond the period of incarceration. Surgical procedure shall not be the responsibility of the Department" (Section 91020.26, p. 719).

The Court of Appeals for the Seventh Circuit affirmed this approach to sex reassignment when it decided in *Maggert v. Hanks* (1997) that sex reassignment surgery is not a form of treatment covered by insurance for citizens in the community; thus, it is not a required medical service due to incarcerated persons. The same court expressed concern that providing sex reassignment surgery to inmates would motivate them to deliberately end up in prison in order to secure a free transformation. As Judge Posner wrote in the decision (*Maggert v. Hanks* 1997, p. 672):

> Withholding from a prisoner an esoteric medical treatment that only the wealthy can afford does not strike us as a form of cruel and unusual punishment. It is not unusual; and we cannot see what is cruel about refusing a benefit to a person who could not have obtained the benefit if he had refrained from committing crimes. We do not want transsexuals committing crimes because it is the only route to obtaining a cure….[M]aking the treatment [for Gender Dysphoria] a constitutional duty of prisons would give prisoners a degree of medical care that they could not obtain if they obeyed the law.

Later, the decision in *Brooks v. Berg* (2003) ran counter to this ruling. It referred to a "decided body of case law" establishing that: "Prison officials cannot deny transsexual inmates all medical treatment simply by referring to a prison policy which makes a seemingly arbitrary distinction between inmates who were and were not diagnosed with GID prior to incarceration" (*Brooks v. Berg* 2003, p. 312). In addition, the court referred to established case law requiring that a medical physician, not corrections staff, make the decision regarding adequate treatment for particular inmates (*Brooks v. Berg* 2003). More recently, Lyralisa Stevens, a California transgender prisoner, was unsuccessful in advancing the argument that denial of the sex reassignment surgery is evidence of "deliberate indifference" to her serious medical needs (*Stevens v. Knowles* 2011).

Most recently, however, a surprising federal court decision ruled in favor of Michelle Kosilek, a transgender prisoner housed in a Massachusetts state prison, ordering the state to provide for the surgery calling it the "only adequate treatment" for this "serious medical need" (*Kosilek v. Spencer* 2012, p. 240). The court does not, however, specify where Kosilek should be housed once this process is complete, leaving that decision to the Department of Corrections. Although court documents reveal that there continue to be delays in moving this forward (*Kosilek v. Spencer* 2013) in spite of the original order to proceed "as promptly as possible," the landmark case signals a judicial shift. In January 2013, a federal appeals court overturned a lower court's dismissal of Ophelia Azriel De'Lonta's case against Virginia corrections officials and held that De'Lonta stated a plausible Eighth Amendment claim when she complained that prison officials refused to allow her sex reassignment surgery (*De'Lonta v. Johnson* 2013).

Notwithstanding the policies and rulings cited above, formal policies related to transgender medical services remain the exception rather than the rule despite a notable increase in department policies on medical treatment for transgender

inmates in the past decade. In addition, there is considerable variability among those policies related to medical care that do exist. In addition to department-specific policy development, in late 2009, the National Commission on Correctional Health Care adopted a statement that included specifications regarding transgender inmate health care urging an individualized approach to decision making related to medical provisions for transgender prisoners (National Commission on Correctional Health Care 2009). Indeed, the BOP has followed suit. Arguably, a policy approach based on individualized treatment could perpetuate divergence or variability of medical treatment care across departments of corrections, leaving it persistently highly negotiable and contestable. Providing hormonal care to inmates is, of course, accompanied by changes in physical characteristics that complicate operational efforts to sort and screen according to concrete biological factors, as is most common in U.S. correctional facilities.

## *Determining Housing*

In U.S. prisons and other detention facilities, inmates are, in the first instance, housed according to their (presumed) biological sex. Although there is no clear and definitive legal standard for determining the placement of transgender prisoners in particular types of prisons or housing units within prisons, the way California addresses this ambiguity is typical and thus instructive as a first step in understanding policy directives along these lines. California's Administrative Procedure Act (Government Code §§ 11340–11359) and the Penal Code § 5058 provide the CDCR with broad discretion to create and implement rules and regulations for the administration of the prisons. In this context, the CDCR routinely assigns convicted felons to men's or women's prisons on the basis of their genitalia, which is the same method used in most states (Brown and McDuffie 2009; Mann 2006; Peek 2003–2004; Rosenblum 1999–2000; Tarzwell 2006–2007). Accordingly, when processing inmates through the corrections system, the first determination—whether to send the person to a men's or a women's prison—is made via a "genitalia-based" approach rather than an "identity-based" approach.

This "genitalia-based" approach to classification and attendant housing assignments is so deeply ingrained that it is not usually documented in prison operational policies in general and transgender-related correctional policies specifically (Brown and McDuffie 2009). Just under half of the jurisdictions reporting formal policies for transgender inmates in Brown and McDuffie's (2009) survey explicitly indicate "housing is addressed by external genitals" (p. 285); this constitutes 71 % of the policies that mention housing at all. Those that do not address this issue presumably take it for granted. This approach to housing in the United States—assignment according to anatomy—appears to be the least variable and most taken-for-granted policy.

Taken-for-granted housing assignments based on anatomy are often justified as a means to an end, with the end being safety and security. In *Stevens v. Williams*

(2008) an Oregon Magistrate Judge concluded that "prevention of heterosexual crime in prisons is a substantial government interest" (p. 13) and anatomical sex segregation "is substantially related to this interest" (p. 14). Furthermore:

> Requiring that segregation be made upon a person's self-professed gender identity, rather than their anatomical gender, would impose the onerous burden on prison officials of sorting out those with gender identity issues from those who would feign such a condition in order to be placed into an opposite sex facility for more nefarious reasons. This could result in increased risk of heterosexual crime (*Stevens v. Williams* 2008, p. 14).

Beyond sex, inmates are often classified by and housed based on other designations that implicate physical vulnerability (e.g., sexual identity or orientation, physical appearance as effeminate) or other characteristics that have implications for safety and security such as race/ethnicity, gang activity, commitment offense (e.g., sex offender), sentence length, and known enemies (see Berk et al. 2003; Dolovich 2011; Goodman 2008). Each of these factors creates a need for particular housing considerations.

Legal challenges to genitalia-based approaches to housing decisions for transgender inmates are primarily rooted in claims of cruel and unusual punishment and deliberate indifference by correctional staff to the physical protection of transgender prisoners (*Farmer v. Brennan* 1994; *Greene v. Bowles* 2004). For example, in *Farmer v. Brennan* (1994) Dee Farmer, a 22-year-old male-to-female preoperative transgender inmate sued prison officials for a violation of her Eighth Amendment right to protection against cruel and unusual punishment. Farmer was sexually assaulted in the male general population of a maximum-security penitentiary two weeks after she was placed there. While the U.S. Supreme Court found that an inmate could bring an Eighth Amendment claim if she could show that prison officials were deliberately indifferent to prison rape, it adopted a subjective standard for the showing of deliberate indifference, which Farmer was not able to prove.

More recently, in California, the CDCR was faced with similar allegations in a case in which a transgender inmate, Alexis Giraldo, sued the organization for failing to protect her from serial sexual assault in Folsom State Prison (*Giraldo v. California Department of Corrections and Rehabilitation* 2007). Giraldo argued her case on many grounds, but of importance to her initial argument was the issue of where she was housed—and with whom—and how various decisions by the CDCR about her housing may have failed to protect her from sexual victimization by other inmates.

The critique of the genitalia-based approach to classification and housing as it relates to transgender prisoners—namely, that individuals with feminine characteristics are more vulnerable to physical victimization when housed among male inmates in a hypermasculine inmate culture—often evokes counter critiques of an identity-based approach to placement that relies upon self-identified gender, quite apart from whether it aligns with one's anatomy (Mann 2006; Peek 2003–2004; Rosenblum 1999–2000). Critics of an identity-based approach to housing placement argue that this approach poses an increased risk for inmates in women's

facilities. While male-to-female transgender inmates may experience less victimization housed in facilities designated for female inmates, other female inmates there might be exposed to greater physical risk. In addition, corrections officials express concern that placing a male-to-female transgender inmate in a women's facility could lead to sex with other female inmates (Rosenblum 1999–2000), which in turn can result in pregnancy (Sylvia Rivera Law Project 2007). Finally, there is the concern that inmates who are biologically female may experience being housed with male-to-female transgender inmates as a violation of their privacy. This was the argument in *Crosby v. Reynolds* (1991) when the plaintiff argued that her privacy had been violated because she was housed in a county jail with a transgender woman. In response, the court pointed to the correctional physicians' recommendation that the transgender woman should remain housed with female inmates as it was in her best psychological and physical interests.

The use of protective custody or administrative segregation presents yet another dilemma. Generally intended for disciplinary purposes, it is also frequently used as a protective measure (Arkles 2009; Sylvia Rivera Law Project 2007). It is employed as a housing tool for the incarceration of vulnerable inmates in general and transgender inmates in particular. A case brought forward by a transgender inmate housed in the Sacramento county jail reveals the challenges of simultaneously considering (and confusing) biological sex and gender in housing decisions as well as prioritizations of safety and security in doing so (*Tates v. Blanas* 2002). In that case the:

> Defendant first seeks to justify this decision on the ground that state law "requires that members of the opposite sex be separated from each other at the jail," but then concedes that pre-operative inmates "are housed according to the biological gender." Defendant further represents that: "The general policy is to place such an individual in the general population of members of the same gender, unless there is reason to believe that doing so will jeopardize the safety of the inmate. Factors include whether the individual exhibits mannerisms and physical characteristics of the opposite sex." Plaintiff desired to be placed in the men's general population. Because of his female appearance and mannerisms, the Main Jail and classification officers were concerned for his safety, as it is not unusual for such persons to be subject to physical assault and rape if housed in general population. Based on these and other factors, it was determined that plaintiff should be classified as a total separation inmate and housed on the protective custody floor (*Tates v. Blanas* 2002, pp. 4–5).

Segregating transgender inmates from the larger inmate population can significantly limit their movement throughout the facility, participation in facility activities, access to resources beyond what is minimally needed for basic hygiene needs, and communication with others. Therefore, it is experienced as differentially punitive (Arkles 2009; Mann 2006; Peek 2003–2004; Rosenblum 1999–2000; Sylvia Rivera Law Project 2007).

Plaintiff Meriwether argued (among other issues) that confinement in administrative segregation indefinitely was a violation of her Eighth Amendment rights (*Meriwether v. Faulkner* 1987). The district court dismissed this claim, indicating that protective custody is "a means of assuring the safe and efficient operation of a prison on a day-to-day basis" (p. 411, internal quotation omitted). Although the

U.S. Court of Appeals for the 7th Circuit reversed the dismissal on different grounds, it could not reconcile what it perceived as a conflict: Meriwether claimed she had experienced assaults when in general population, but she did not want to be segregated (see Arkles 2009). Similarly, activist organizations argue that these segregation practices result in both a "double victimization" for victims of violence as well as a form of punishment for one's nonconforming gender identity status (Daley 2005; DC Trans Coalition 2010; Just Detention International 2009).[9] Two recent court decisions support the argument that this kind of solitary confinement or "total separation" used in the Sacramento County Jail did just that and, thus, was not permissible (*Medina-Tejada v. Sacramento County* 2006; *Tates v. Blanas* 2003; see also the discussion by Arkles 2009), even if presumably in pursuit of goals of safety and security.

Only a few large jails currently screen for transgender status and house inmates in separate sections and, even then, this group is usually housed in separate "wards" or "pods" for gay inmates (Dolovich 2011; Mann 2006; Peek 2003–2004; Rosenblum 1999–2000; Tewksbury and Potter 2005). In 2012, the Los Angeles Police Department announced the opening of a special 24-bed pod in the downtown jail in which transgender arrestees will be housed. As the Jail Division Commander who announced this innovation said in a public forum, "This is a major change [that will form an] environment that's safe and secure, as there's been a history of violence against transgender people" (Los Angeles Times 2012; see also Jenness 2013). In a Los Angeles County Jail, gay men and transgender women are housed in a segregated unit—an approach designed to protect the group from sexual harassment and violence (Dolovich 2011). The San Francisco County Jail protocol is also unique in that it provides more specific directives calling for transgender inmates to be housed according to their identified gender even within the larger jail for men (Scheel and Eustace 2002). Rosenblum (1999–2000) explains that the New York City Department of Corrections used a separate ward for both gay and transgender inmates and officials did not make distinctions between the groups. The challenge is to ensure that separation by transgender (or any other) status does not result in diminished resources and differentially punitive conditions.

[9] Taking a different perspective, and based on experiences with transgender, intersex, and gender nonconforming incarcerated legal clients, Arkles (2009) argues that isolating this group of prisoners in correctional facilities actually prohibits relationship and community building that, "resist violence and help people who are targets of violence to survive" (p. 518). Arkles (2009) posits that there are benefits of friendships, consensual romantic and sexual relationships, and familial relationships built in prison. Although recent empirical research by Jenness et al. (2011) similarly indicates that transgender inmates report benefits from relationships among each other and with non-transgender inmates, it also suggests that Arkles (2009) may be overstating these benefits and underestimating the negative effects. In their work, Jenness et al. (2011) reveal that transgender inmates who reported sexual and "marriage-like" relationships with other inmates were also more likely to experience sexual assault. In addition, transgender inmate culture may also facilitate competition that leads to violence within the group often related to competition for, and attention from, potential partners (Sumner 2009).

In the past decade, several local correctional systems have enacted policies that challenge sex segregation as an entirely taken-for-granted and normative practice. First, in New York juvenile detention centers, a new policy emerged after a 2006 lawsuit brought by a 15-year-old male-to-female transgender youth (Kates 2008). Among many provisions, a committee now considers youths' requests for gender-identity transfers or private sleeping quarters and showers. Second, Washington State's King County Department of Adult and Juvenile Detention (2006) similarly put forth a policy that establishes protocols for transgender inmates, including consideration of gender identity in housing and ensuring similar access to services if/when housed in protective custody. Third, the D.C. Department of Corrections released a new policy that addresses the treatment of transgender inmates, including privacy for strip searches and the development of a transgender committee that will determine the placement of transgender inmates who may be considered for gender-based placement (District of Columbia Department of Corrections 2009; Najafi 2009). Fourth, as mentioned in the introduction of this chapter, Cook County Jail in Chicago adopted a policy that considers the housing (and other aspects of custody and care) of transgender inmates on an individual basis (Hawkins 2011). This includes the possibility of being placed in housing units according to gender identity rather than biological sex. Fifth, and most recently, the Denver Sheriff's department established a policy that includes attending to gender pronouns and the gender of staff conducting searches, and a transgender review board that will examine the appropriate housing conditions for each transgender prisoner in place of segregation in efforts to ensure continued access to programming (Garcia 2012).

Clearly, there appears to be a move toward innovative policies at the local level and less so at the state and federal levels.[10] Within this context, the final type of policy to be considered is policy that addresses appearance, demeanor, and gender displays.

## *Displaying Gender*

Relatively few recent correctional policies addressing transgender inmates are attentive to what many consider the minutia of correctional operations and others consider central to the well-being of transgender inmates. Beyond the larger, more

[10] Most frequently, calls for improvement in housing procedures related to transgender inmates are for identity-based placement (Broadus 2009; Mann 2006; Peek 2003–2004; Rosenblum 1999–2000; Transgender Law Center, n.d.) or at least for housing this group in a separate wing or unit. The expectation is that this will lead to increased safety. Recent work, however, complicates this issue. Respondents in the studies conducted by the Sylvia Rivera Law Project (2007) and Emmer et al. (2011) were not in agreement regarding housing preferences. Some respondents felt it was better to manage prison life while in segregation most of the day, others prefer to be housed in the general population. Related, Jenness et al. (2011) found that the majority of male-to-female transgender inmates in California prisons for men would prefer to be housed in facilities for men (65 %). Reasons provided included an emphasis on the access to men in a male facility.

visible and constitutionally contestable policies that differentially affect transgender inmates (discussed in the previous sections), there are policies that enable and curtail gender displays in prison. Transgender prisoners and their advocates repeatedly point to rules and regulations, as well as daily practices, that contribute to and detract from the identity and well-being of transgender prisoners. With this in mind, this final subsection focuses on policies designed to address gender expression in general and pronoun use and other gender displays in the form of clothing and adornment in particular. These policies encourage correctional efforts to couple gender and sex segregation through an explicit commitment to traditional heteronormative gender norms.

## *Name and Pronoun Use*

In general, policies in place today in U.S. correctional systems do not explicitly address the use of gendered pronouns in prisons. However, transgender prisoners have routinely called for policies that require correctional staff to refer to them by the name that reflects their gender identity and use the appropriate pronoun. As Scheel and Eustace (2002) write in their commentary in the *Model Protocols on the Treatment of Transgender Persons by the San Francisco County Jail*, "One of the most consistent complaints from transgender inmates is that they are referred to by pronouns associated with their birth-identified gender instead of those pronouns which respect their gender identity" (p. 8). Testimony before the National Prison Rape Elimination Commission in 2005 by the Director of the Transgender Law Center supports this point. For transgender prisoners, this is not mere "name calling," it is a matter of respect.

Framed as a matter of respect, some correctional policies indirectly address the issue of deference embodied in "name calling." For example, the California departmental policy on *Rights and Respect of Others* located within "Article 1: Behavior" within the section on Rules and Regulations of Adult Operations and Programs (CDCR Title 15 2009, Section 3004, p. 19) suggests some discretion along these lines:

> (a) Inmates and parolees have the right to be treated respectfully, impartially, and fairly by all employees. Inmates and parolees have the responsibility to treat others in the same manner. Employees and inmates may use first names in conversation with each other when it is mutually acceptable to both parties.

Another policy on *Employee Conduct* within Subchapter 5 on Personnel, "Article 2: Employees" is perhaps more specific as it cautions against using anything other than "proper" names (CDCR Title 15 2009, Section 3391, p. 210):

> (a) Employees shall be alert, courteous, and professional in their dealings with inmates, parolees, fellow employees, visitors and members of the public. Inmates and parolees shall be addressed by their proper names, and never by derogatory or slang reference.

Depending on how the above policies are interpreted, failure to call a transgender prisoner a name that is preferred by the prisoner may be perceived as a show of disrespect and, thus, a violation of departmental policy. Alternatively, using pronouns that align with gender identity rather than (assumed) sex category (if different) may be interpreted as use of "slang," thus a departure from the use of "proper names" and a violation of policy.

This issue was recently addressed in *Stevens v. Williams* (2008) when a U.S. Magistrate Judge in Oregon reasoned that correctional officials were not required to use female pronouns even though Stevens had obtained a formal (i.e., legally recognized) name change from the County. The court concluded that even if undesired pronoun use was perceived as verbal harassment, verbal harassment does not violate Eighth Amendment protections. From an operational standpoint, this is perhaps not surprising given that the use of male and female pronouns challenges efforts to sort and screen by sex. Use of male *and* female pronouns would necessarily indicate that a "male facility" also housed "female" or feminine inmates, violating a fundamental (even if unwritten) correctional policy that segregates by sex (and, presumably gender). This potential confusion is highlighted in a pretrial motion in *Giraldo v. California Department of Corrections and Rehabilitation* (2007). Defendants requested:

> …the Court issue an order preventing plaintiff's attorney from attiring plaintiff in woman's [sic] clothing. Argument. The Court should issue an order preventing plaintiff's attorneys from referring to plaintiff in the feminine or using feminine pronouns at trial because such practices raise a danger of prejudice and of misleading of the jury. (Evid. Code, § 352; *Garfield v. Russell* (1967) 251 Cal.App.2d 275, 279.) Specifically, the jury would be unduly prejudiced against defendants if the jury gets the impression that defendants housed a female individual in a male prison…(Defendants' Motion in Limine No. 4 in *Giraldo v. The California Department of Corrections and Rehabilitation et al.* CGC-07-461473, p. 2).

The judge ruled against this motion.

## *Clothing and Adornment*

While Petersen et al.'s (1996) research is over 16 years old, their indication that only 3 % of correctional jurisdictions specified an option for inmates to choose gender-appropriate clothing remains consistent with current trends—trends that will become clearer as transgender correctional policy continues to become institutionalized. Few recently developed policies in local systems go beyond issues deemed legally "necessary" to embrace practices related to daily confinement, human dignity, and respect that expand the domain of allowable gender displays in carceral environments. For example, the New York policy for youth includes provisions that allow for considerations of requests for gender-identity transfers or private sleeping quarters and showers mentioned earlier. Youth are also permitted to wear gender-appropriate uniforms, including bras and female underwear for male-to-female transgender youth. Grooming standards are the

same for males and females. Youth may also request to be called any name, and staff are required to use the pronoun requested by the youth both in person and on any facility documents. Likewise, according to news reports, the new Denver Sheriff's Department policy allows for specifying preferred name and pronoun (Garcia 2012). As another example, the Washington D.C. jail policy requires that inmates are identified by last name (without pronoun use) and allows for clothing consistent with the gender of their housing assignment. Notably, changes in policies that facilitate gender presentation quite apart from biological sex are often accompanied by gender-, rather than sex-, based housing placement in these local jurisdictions.[11]

Far more often, however, clothing and cosmetics beyond what is outlined in state corrections' policies are usually considered contraband. This includes bras for transgender inmates who have developed breasts as a result of hormonal treatment (even if provided by the department of corrections) or implants. Likewise, there are rules and regulations that specify the use of cosmetics, grooming standards, and other issues related to adornment and gender displays.

In California, home to the largest *known* transgender prison population in the U.S. (Jenness et al. 2011; Sexton et al. 2010; c.f., Brown and McDuffie 2009), policies that reveal gendered distinctions along these lines are found in the Department Operations Manual. A search of all chapters directly related to inmate management in the 2009 version of this manual revealed the largest number of delineations along gender lines in the chapter on Custody and Security Operations and often when clothing and hygiene regulations are outlined. Additional distinctions with regard to "personal cleanliness" are made in another operations manual called the Title 15, an expanded version of the Department Operations Manual.

For example, Chap. 5 : *Adult Custody and Security Operations, Article 43: Inmate Property* in the *Department Operations Manual* specifies that "**Male** inmates shall not receive or possess items of clothing designed and manufactured specifically for **women** unless authorized for medical reasons" (Section 54030.17.2, p. 443). *Title 15, Article 5: Personal Cleanliness (Section 3062)* elaborates grooming standards for males and females in sections h and j–l as follows:

> (h) Facial hair, including short beards, mustaches, and sideburns are permitted for **male** inmates and shall not extend more than one-half inch in length outward from the face.
>
> (k) An inmate may not pierce any part of his/her body for the purpose of wearing an earring or other jewelry. A **male** inmate may not possess or wear earrings. A **female** inmate may wear authorized earrings with only one matching earring worn in each ear.

[11] In addition, innovative policies have begun to develop in other arenas of the criminal justice system. For example, recently the Los Angeles Police Department formalized a policy on "police interactions with transgender individuals" (Los Angeles Police Department 2012) which includes guidelines regarding what language to use when addressing transgender individuals and how to conduct a field search.

> An inmate shall not possess or wear any type of jewelry or other object intended to be worn as a body piercing adornment.
>
> (j) An inmate's fingernails shall not extend more than ¼ inch beyond the tips of the fingers. Nails shall be neat and clean. **Female** inmates may be permitted to wear only clear nail polish.
>
> (l) A **female** inmate may wear cosmetics that blend with or match the natural, non-ruddy skin tone. False eyelashes are not permitted (Section 3062, p. 45, emphasis added).

In addition, the *Department Operations Manual* specifies that female inmates are allowed an eyebrow pencil/eyeliner, as well as an eye shadow kit and face powder. Male inmates are not afforded the same personal care items. Related, male inmates may possess a wedding band ("one only") whereas female inmates may possess a wedding ring or wedding/engagement ring set. Importantly, and as discussed earlier, who is female and who is male correspond to who is in a men's prison and who is in a women's prison, not prisoners' gender identity. Furthermore, the *Title 15* indicates that failure to adhere to these guidelines can result in disciplinary action. Finally, these policies contrast to the small number of matches found in the chapter on Health Care Services where it was expected there would be significant biological distinctions made.

Institutional rationales for gendered distinctions along these lines are frequently based on cautionary concerns with regard to safety and security, a priority with which judicial actors tend to agree (see Arkles 2012).[12] In addition, some argue that maintaining uniformity through myriad disciplinary tactics (including uniformity in physical appearance) is conducive to facility operations, including maintaining order and thus increased safety (DiIulio 1987). As Harada (2006) explained:

> If the proffered reason given the prison system is safety, the courts will likely find that a compelling reason. However, if the proffered reason is something akin to administrative convenience, that will likely trigger higher scrutiny of the classification regime (p. 653).[13]

This rationale was contested by Plaintiff Star in the case *Star v. Gramley* (1993). Star claimed that the warden violated her First Amendment rights to freedom of expression in forbidding her to wear women's makeup and clothing. The warden argued that clothing restrictions are in place for the purpose of security and inmates wearing women's clothing and makeup "could provoke and/or promote homosexual activity or assault" (*Star v. Gramley* 1993, p. 278). In addition, the warden argued that inmates' ability to change their physical appearances creates an escape concern. The U.S. District Court ruled in favor of the warden/defendant, effectively showing judicial deference to corrections administrators (Feeley and Rubin 1998).

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[12] However, see the recent U.S. Court of Appeals for the First Circuit decision in *Battista v. Clarke* (2011), in which the court upheld the district court decision challenging the defendants' claims that hormonal therapy would result in an increased safety risk.

[13] However, see *Tates v. Blanas* (2003).

In a subsequent case, the U.S. Court of Appeals for the 6th Circuit in *Murray v. United States Bureau of Prisons* (1997) agreed that "an inmate is not entitled to the clothing of his choice, and prison officials do not violate the constitution simply because the clothing may not be esthetically pleasing or may be ill fitting" (at 2, internal quotation and citation omitted). In its denial of the plaintiff's requested hair and skin products, the court reasoned that, "Because routine discomfort is part of the penalty that criminal offenders pay for their offenses against society, only those deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to form the basis of an Eighth Amendment violation" (at 2, internal quotation and citation omitted).

Although not brought as a transgender issue specifically, a similar matter was addressed in the case *Deblasio v. Johnson* (2000). The court applied intermediate scrutiny to the challenge of hair length requirements for male and female inmates. The State's reasoning underlying different hair length requirements for male inmates was based on the argument that males are a greater security threat and, thus require more precautionary guidelines. The U.S. District Court found that security was both an important and compelling "governmental and penological objective" and that the State's methods were "substantially related" to this objective (p. 328).

Pointing out the artificiality of this reasoning, Harada (2006) argues that:

> Although *Deblasio* appears to be a frivolous lawsuit, the court's reasoning appears to rely upon sex and gender stereotypes. The court does not question the essential meaning of the terms male or female in its analysis and as a result does not interrogate the assumption that males are more violent than females (p. 656).

Using the court's reasoning, perhaps feminine inmates in male facilities are also significantly less "prone" to violence and escape and, conversely, masculine inmates in female facilities may be more prone. If the above reasoning stands, policies could presumably vary according to gender identification rather than biological sex. These policies detailing how "males" and "females" are required to present themselves expose the gendering of correctional policy at the level of gender displays (see also Arkles 2012). Prison policies that manage physical gender presentation in these ways reveal that while the organization formally manages according to distinctions made by sex/anatomy, this correctional control extends to gender/identity distinctions. As with the use of gender- (rather than sex-) based pronouns, formally allowing gendered presentation of self would require the institution to concede to a change in practice or policy with regard to gender segregation.

However, it is notable that rules do not fully specify, much less effectively control, what Goffman (1979) refers to as gender display and demeanor. "If gender be defined as the culturally established correlates of sex (whether in consequence of biology or learning), then gender display refers to the conventionalized portrayals of these correlates" (p. 69). Demeanor includes "behavior typically conveyed through deportment, dress, and bearing" (Goffman 1967, p. 77). It is also consequential that these policies cannot regulate others' interpretations of gendered conduct that also imbue gendered identities and interactions (Kessler and McKenna 2000).

Decades of research reveal that the prison remains a multi-gendered culture with gendered interactions within the group even as it is administratively controlled to be otherwise (Coggeshall 1988; Donaldson 2001; Fleisher and Krienert 2009; Keys 2002; Sykes 1958). Thus, an unwavering commitment to safety and security through sex segregation confronted by the reality of the incarceration of trans*gender* inmates results in a key paradox: gender integration in sex-segregated facilities.

## Discussion and Conclusion

The routine and seemingly unproblematic practice of sex segregation in U.S. detention facilities has gained newfound visibility and become the focus of legal, correctional, and public debate as transgender prisoners and their advocates press for a reconsideration of prison policy in general and the development of correctional policies for transgender inmates in particular. The development of this body of policy is, at best, in the incipient stages. This is not surprising because it is only recently in the history of penology—in the latter decades of the twentieth century and the first decade of the twenty-first century—that transgender inmates have come to the fore in public, activist, and correctional consciousness and attendant debates.

Situated within this historical context, this chapter has examined published surveys of correctional policies, original policies, judicial rulings, and legal and advocate discourse related to the management of transgender inmates. Our focus on policies and rulings addresses how transgender people are delineated in carceral environments; unique medical concerns for transgender inmates, especially those related to initiating and sustaining hormone therapy; complicated questions about where best to house transgender inmates—in the general population or in segregated housing assignments—in light of their amplified vulnerability to assault; and an array of dilemmas related to the physical appearance and grooming standards for transgender inmates, including the wearing of female clothing, the use of cosmetics that accentuate femininity, and the ability to wear long hair and be respectfully referenced by female names and pronouns in men's correctional facilities.

Looking across these policy concerns, there is considerable asymmetry in the degree to which policy has emerged and become homogenized. Within the larger body of transgender corrections policy, some policies regarding some specific issues reveal considerable variability while other policies regarding specific issues reveal near-uniformity. Most notably, there is almost complete agreement on three types of policies. First, the almost universal practice of genitalia-based prison assignments privileges genitalia over other markers of sex and gender. Second, there is comparatively little variation in the use of medical terminology to identify inmates as transgender. Seen in these terms, transgender prisoners are marked by disorder and pathology effectively categorized as a departure from a "normal" or

"healthy" gender type around which correctional policies and practices in prisons for *men* and prisons for *women* are organized. The institutional reliance on the DSM designations is constant—although this may change form as recent changes in the DSM signal a shift away from necessarily pathologizing transgender prisoners. Third, although there remain policies that speak to presentation of self in daily life in sex-segregated prisons, these presume that male/female sex segregation constitutes gender segregation. What is and is not allowed and tolerated in terms of *gender*-specific clothing, adornment, and the use of gendered pronouns is most often *not* addressed by transgender correctional policy. Nor does it provide for regulations on other forms of gender display—walk, talk, and social interaction.

In contrast, policies that address the conditions under which initial and continuing hormone treatment can and must be provided in prison reveal contested terrain. In addition, whether or not transgender prisoners are entitled to sex change operations while in prison constitutes the most recently visible contested domain with regard to transgender prisoners. Although prisoner litigation has resulted in a move toward increased access to hormonal treatment while incarcerated (O'Day-Senior 2008–2009), this practice remains far from agreed upon as a normative approach to the treatment of transgender persons in carceral settings. And, while most judicial rulings have denied access to sex change surgery for transgender prisoners, the most recent court ruling reverses this trend.

One way to make sense of this asymmetry in the degree to which transgender correctional policy is settled is to situate the emergence, formulation, and adoption of some policies (and not others) within a particular context defined by three features. These policies have emerged and taken form in a culture of control that provides the opportunity for external, non-state actors to influence correctional policies (Garland 2001); in which judicial deference toward corrections administrators and operations is consequential (Feeley and Rubin 1998; Jenness and Smyth 2011); and among correctional systems that privilege safety and security above other concerns (Gaes et al. 2004).

Taken as a whole, this body of policy reveals a paradox. On the one hand, the deep and abiding commitment to sex segregation as a defining characteristic of carceral environments affirms a binary gender system. That remains constant and uncontested. On the other hand, however, the policies examined in this chapter reveal a plethora of organizational accommodations promised to transgender prisoners by authority of policy; taken as a whole, the provisions acknowledge gender variant prisoners who do not conform to a dichotomous gender system and thus mark carceral environments as multi-gendered institutions.

The mosaic of judicial rulings and organizational policies discussed in this chapter reveal how the production of gender is facilitated and constrained in carceral settings. At the level of macrosorting, transgender policy maintains a correctional commitment to sex segregation, despite political and legal challenges as well as recent research that reveals that current policy and practice have not kept transgender inmates safe (Jenness et al. 2007; 2011; Jenness 2014). At the level of microgender displays, however, transgender policies—or the absence thereof—

enable the production of multigendered prison environments by only minimally controlling deference, demeanor, and adornment. At the end of the day, these polices recognize the presence of transgender prisoners, even as they inevitably reaffirm a binary understanding of gender.

At this point in the development of transgender correctional policy, much remains to be considered. First and foremost, the inventory presented in this chapter needs to be kept current. During the time of this writing, the rate of change in policy development has accelerated considerably. Second, and related, the next step is to begin to turn the focus from policy as "law-on-the-books" to implementation as "law-in-action" to fully grasp the extent to which these changes in formalized policy have led to on-the-ground changes in practice. Consistent with decades of research in the field of law and society that reveal deep and continuous gaps between the "law-on-the-books" and "law-in-action," legal scholar, transgender activist, and founder of the Sylvia Rivera Law Project, Dean Spade, has argued that law—often relied upon as a central institution to motor social change, especially in the arena of penal practice and civil rights—is not a viable pathway toward it (Winter 2011). Instead, he argues for more efforts to be put into broad social movements (see also Arkles 2012). Regardless, to increase policy effectiveness, practitioners, activists, and researchers alike would do well to turn efforts toward implementation with a single two-pronged goal in mind: to respect the dignity of transgender prisoners and to keep them keep them safe while locked up (for more along these lines, see Jenness 2014). This two-tiered criteria is a reasonable means by which to assess both new and old policies.

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## References

Acker, J. (1990). Hierarchies, jobs, bodies: A theory of gendered organizations. *Gender and Society, 4*(2), 139–158.

Alexander, R., Jr, & Meshelemiah, J. C. A. (2010). Gender identity disorders in prisons: What are the legal implications for prison mental health professional and administrators? *The Prison Journal, 90*(3), 269–287.

American Psychiatric Association. (2000). *Diagnostic and statistical manual of mental disorders: DSM-IV-TR*. Washington, DC: American Psychiatric Association.

Arkles, G. (2009). Safety and solidarity across gender lines: Rethinking segregation of transgender people in detention. *Temple Political and Civil Rights Law Review, 18*(2), 515–560.

Arkles, G. (2012). Correcting race and gender: Prison regulation of social hierarchy through dress. *New York University Law Review, 87*(4), 859–959.

Berk, R. A., Ladd, H., Graziano, H., Baek, J. (2003). A randomized experiment testing inmate classification systems. *Criminology & Public Policy, 2*(2), 215–242.

Britton, D. M. (2003). *At work in the iron cage: The prison as gendered organization*. New York, NY: New York University Press.

Broadus, K. W. (2009). The criminal justice system and trans people. *Temple Political and Civil Rights Law Review, 18*(2), 561–572.

Brown, G. R., & McDuffie, E. (2009). Health care policies addressing transgender inmates in prison systems in the United States. *Journal of Correctional Health Care, 15*(4), 280–291.

California Department of Corrections. (1948). California State Archives. *Corrections. Adult authority and director, department of corrections, meetings, minutes*, Sacramento, CA, F3717:13.

California Department of Corrections and Rehabilitation. (2010). *Department operations manual.* Retrieved from http://www.cdcr.ca.gov/Regulations/Adult_Operations/DOM_TOC.html

California Department of Corrections and Rehabilitation. (2009). *California code of regulations. Title XV: Crime prevention and corrections.* Retrieved from http://www.cdcr.ca.gov/Regulations/Adult_Operations/docs/Title15-2012.pdf

Coggeshall, J. (1988). Ladies behind bars: A liminal gender as cultural mirror. *Anthropology Today, 4*(4), 6–8.

DC Trans Coalition. (2010, March 12). *Testimony before the DC council committee on public safety and the judiciary regarding department of corrections oversight.* Retrieved from http://dctranscoalition.files.wordpress.com/2010/03/dc-trans-coalition-testimony-regarding-department-of-corrections-03-12-10.pdf

Daley, C. (2005, August 15). *At risk: Sexual abuse and vulnerable groups behind bars: Second public hearing of the National Prison Rape Elimination Commission*, *Testimony before the Commission in San Francisco, CA*. Retrieved from http://www.nclrights.org/site/DocServer/prison_daley081905.pdf?docID=941

DiIulio, J. J. (1987). *Governing prisons: A comparative study of correctional management*. New York, NY: Free Press.

District of Columbia Department of Corrections. (2009). *Program statement: Gender classification and housing, No. 4020.3.* Retrieved from http://doc.dc.gov/doc/frames.asp?doc=/doc/lib/doc/program_statements/4000/PS020_3GenderClassificationandHousing022009.pdf

Dolovich, S. (2011). Strategic segregation in the modern prison. *American Criminal Law Review, 48*(1), 1–110.

Donaldson, S. (2001). A million jockers, punks, and queens. In D. F. Sabo, T. A. Kupers & W. J. London (Eds.), *Prison masculinities* (pp. 118–126). Philadelphia, PA: Temple University Press.

Edelman, L. (1992). Legal ambiguity and symbolic structures: Organizational mediation of civil rights law. *American Journal of Sociology, 97*, 1531–1576.

Emmer, P., Lowe A., & Marshall, R. B. (2011). This is a prison, glitter is not allowed: Experiences of trans and gender variant people in Pennsylvania's prison systems. *A report by the Hearts on a Wire Collective*. Retrieved from http://www.galaei.org/documents/thisisaprison.pdf

Feeley, M. M., & Rubin, E. L. (1998). *Judicial policy making and the modern state: How the courts reformed America's prisons*. Cambridge, MA: Cambridge University Press.

Feeley, M. M., & Simon, J. (1992). The new penology: Notes on the emerging strategy of corrections and its implications. *Criminology, 30*(4), 449–474.

Fleisher, M. S., Krienert, J. L., & Jacobs, J. B. (2009). *The myth of prison rape: Sexual culture in American prisons*. Lanham, MD: Rowman and Littlefield Publishers.

Gaes, G. G., Camp, S. D., Nelson, J. B., & Saylor, W. G. (2004). *Measuring prison performance: Government privatization and accountability*. Walnut Creek, CA: AltaMira Press.

Garcia, N. (2012, June 22). Denver Sheriff department to implement new trans policies. *Out Front*. Retrieved from http://outfrontonline.com/ofcnow/denver-sheriff-implement-newtrans-policies/

Garland, D. (2001). *Culture of control: Crime and social order in contemporary society*. Chicago, IL: University of Chicago Press.

Goffman, E. (1967). *Interaction ritual: Essays in face-to-face behavior*. Chicago, IL: Aldine Publishing Company.

Goffman, E. (1979). *Gender advertisements*. New York, NY: Harper and Row.

Goodman, P. (2008). It's just black, white, or Hispanic: An observational study of racializing moves in California's segregated prison reception centers. *Law & Society Review, 42*(4), 735–770.

Grant, J. M., Mottet, L. A., Tanis, J. D., Harrison, J., Herman, J. L., & Keisling, M. (2011). *Injustice at every turn: A report of the National Transgender Discrimination Survey*. Washington, DC: The National Center for Transgender Equality and The National Gay and Lesbian Task Force.

Grattet, R., & Jenness, V. (2005). The reconstitution of law in local settings: Agency discretion, ambiguity, and a surplus of law in the policing of hate crime. *Law & Society Review, 39*(4), 893–940.

Harada, N. (2006). Trans-literacy within Eighth Amendment jurisprudence: Defusing gender and sex. *New Mexico Law Review, 36*, 627–660.

Hawkins, K. (2011, April 9). Jail has new policy for transgender inmates. *NBC Chicago*. Retrieved from http://www.nbcchicago.com/news/local/cook-county-jail-transgender-inmates-119516094.html

Herbert, R. (1985). Women's prisons: An equal protection evaluation. *The Yale Law Journal, 94*(5), 1182–1206.

Ismaili, K. (2006). Contextualizing the criminal justice policy-making process. *Criminal Justice Policy Review, 17*(3), 255–269.

Jenness, V. (2011). Getting to know "the girls" in an "alpha-male" community: Notes on fieldwork on transgender inmates in California prisons. In S. Fenstermaker & N. Jones (Eds.), *Sociologists backstage: Answers to 10 questions about what they do* (pp. 139–161). New York, NY: Routledge.

Jenness, V. (2014). Pesticides, prisoners, and policy: Complexity and praxis in research on transgender prisoners and beyond. *Sociological Perspectives*.

Jenness, V., & Grattet, R. (2005). The law-in-between: The effects of organizational perviousness on the policing of hate crime. *Social Problems, 52*(3), 337–359.

Jenness, V., Maxson, C., Matsuda, K., & Sumner, J. (2007). Violence in California correctional facilities: An empirical examination of sexual assault. *Report submitted to the California Department of Corrections and Rehabilitation*. Sacramento, CA. Retrieved from http://ucicorrections.seweb.uci.edu/pdf/FINAL_PREA_REPORT.pdf

Jenness, V., Maxson, C., Sumner, J., & Matsuda, K. (2010). Accomplishing the difficult but not impossible: Collecting self-report data on inmate-on-inmate sexual assault in prison. *Criminal Justice Policy, 21*(1), 3–30.

Jenness, V., Sexton L., & Sumner, J. (2011). Transgender inmates in California prisons: An empirical study of a vulnerable population. *Report submitted to the California Department of Corrections and Rehabilitation*. Sacramento, CA.

Jenness, V., & Smyth, M. (2011). The passage and implementation of the Prison Rape Elimination Act: Legal endogeneity and the uncertain road from symbolic law to instrumental effects. *Stanford Law & Policy Review, 22*(2), 489–528.

Jenness, V., Sumner, J., Sexton, L., & Alamillo-Luchese, N. (2014). Cinderella, Wilma Flinstone, and Xena the Warrior Princess: Capturing diversity among transgender women in men's prisons. In C. Renzetti & K. Bergen (Eds.), *Understanding diversity: Celebrating difference, challenging inequality*. Upper Saddle River, NJ: Allyn & Bacon Press.

Johnson, D. (1987, June 1). Women blend in with men at Illinois prison. *The New York Times*. Retrieved from http://www.nytimes.com/1987/06/01/us/women-blend-in-with-men-at-illinois-prison.html

Just Detention International. (2009, February). *A call for change: Protecting the rights of LGBTQ detainees.* Retrieved from http://www.justdetention.org/pdf/CFCLGBTQJan09.pdf

Kates, W. (2008, June 20). Advocates hail new policy for transgender youth at New York's juvenile detention centers. *StarTribune.com.* Retrieved from http://www.startribune.com/templates/Print_This_Story?sid=20595989

Kessler, S. J., & McKenna, W. (2000). Gender construction in everyday life. *Feminism and Psychology, 10*(1), 11–29.

Keys, D. (2002). Instrumental sexual scripting: An examination of gender-role fluidity in the correctional institution. *Journal of Contemporary Criminal Justice, 18*(3), 258–278.

King County Department of Adult and Juvenile Detention. (2006, August 31). Chapter 6: Inmate classification and discipline. Adult Divisions. *General Policy Manual*. Retrieved from http://www.aclu.org/files/images/asset_upload_file70_27801.pdf

Kohler, L. (2005, February 7). *Primary care for transgender people.* Presentation to the Hawaii AIDS education and training center: AIDS education project. Retrieved from http://www.hawaii.edu/hivandaids/links_TransgenderLoriKohler.htm

Lee, A. (2008). Trans models in prison: The medicalization of gender identity and the Eighth Amendment right to sex reassignment therapy. *Harvard Journal of Law and Gender, 31*, 447–471.

Los Angeles Police Department. (2012, April 10). Police interactions with transgender individuals. *Memorandum from LAPD chief of police to all department personnel*. Retrieved from http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDkQFjAB

Los Angeles Times. (2012, April 18). LAPD plans separate transgender area in jail. *SFGate*. Retrieved from http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2012/04/18/BAR51O4IVU.DTL&type=printable

Lynch, M. (1998). Waste managers? The new penology, crime fighting, and parole agent identity. *Law & Society Review, 32*(4), 839–870.

Mahan, S., Mabli, J., Johnston, B., Trask, B., & Hilek, J. (1989). Sexually integrated prisons: Advantages, disadvantages and some recommendations. *Criminal Justice Policy Review, 3*(2), 149–158.

Mann, R. (2006). The treatment of transgender prisoners, not just an American problem: A comparative analysis of American, Australian, and Canadian prison policies concerning the treatment of transgender prisoners and a "universal" recommendation to improve treatment. *Law and Sexuality: Review of Lesbian, Gay, Bisexual, and Transgender Legal Issues, 15*, 91–133.

Maxson, C. L., & Klein, M. W. (1997). *Responding to troubled youth*. New York, NY: Oxford University Press.

Meyer, J. W., & Rowan, B. (1977). Institutionalized organizations: Formal structure as myth and ceremony. *The American Journal of Sociology, 83*(2), 340–363.

Meyer, J. W., & Rowan, B. (1978). The structure of educational organizations. In M. W. Meyer & Associates (Eds.), *Environments and organizations* (pp. 78–109). San Francisco, CA: Jossey-Bass, Inc.

Moran, M. (2013). New gender dysphoria criteria replace GID. *Psychiatric News, 48*(7), 9–14.

Moynihan, D. R. (2005). The impact of managing for results mandates in corrections: Lessons from three states. *Criminal Justice Policy Review, 16*(1), 18–37.

Najafi, Y. (2009, March 5). Prison progress: Activists offer measured praise for transgender plans. *Metroweekly.* Retrieved from http://www.metroweekly.com/news/?ak=4090

Namaste, V. K. (2000). *Invisible lives: The erasure of transsexual and transgendered people*. Chicago, IL: University of Chicago Press.

National Center for Lesbian Rights. (2011). *Federal bureau of prisons makes major change in transgender medical policy.* Retrieved from http://www.nclrights.org/site/PageServer?pagename=press_2011_Prisons_TransgenderPolicy_Change_093011

National Commission on Correctional Health Care. (2009). *Position statements: Transgender health care in correctional settings.* Retrieved from http://www.ncchc.org/transgender-health-care-in-correctional-settings

O'Day-Senior, D. (2008–2009). The forgotten frontier? Healthcare for transgender detainees in immigration and customs enforcement detention. *Hastings Law Journal, 60,* 453–476.

Peek, C. (2003–2004). Breaking out of the prison hierarchy: Transgender prisoners, rape, and the Eighth Amendment. *Santa Clara Law Review, 44,* 1211–1248.

Petersen, M., Stephens, J., Dickey, R., & Lewis, W. (1996). Transsexuals within the prison system: An international survey of correctional services policies. *Behavioral Sciences & the Law, 14*(2), 219–229. doi:10.1002/(sici)1099-0798(199621)14:2<219:aid-bsl234>3.0.co;2-n.

Pratt, T. C., Maahs, J., & Stehr, S. D. (1998). The symbolic ownership of the corrections "problem": A framework for understanding the development of corrections policy in the United States. *The Prison Journal, 78*(4), 451–464.

Rafter, N. H. (1985). *Partial justice: Women in state prisons, 1800–1935*. Boston, MA: Northeastern University Press.

Rosenblum, D. (1999-2000). "Trapped" in Sing Sing: Transgendered prisoners caught in the gender binarism. *Michigan Journal of Gender and Law, 6*, 499–571.

Rosenberg, D. (2007, May 21). The mystery of gender: Aside from the obvious, what makes us male or female? The new visibility of transgender America is shedding light on the ancient riddle of identity. *Newsweek, 50–51*, 53–57.

Scheel, M. D., & Eustace, C. (2002, July 25). Model protocols on the treatment of transgender persons by San Francisco County Jail. *National Lawyers Guild & City & County of San Francisco Human Rights Commission*. Retrieved from http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CC0QFjAA

Sexton, L., Jenness, V., & Sumner, J. (2010). Where the margins meet: A demographic assessment of transgender inmates in men's prisons. *Justice Quarterly*. doi:10.1080/07418820903419010.

Stryker, S. (2008). *Transgender history*. Berkeley, CA: Seal Studies.

Sumner, J. M. (2009). *Keeping house: Understanding the transgender inmate code of conduct through prison policies, environments, and culture.* (Unpublished doctoral dissertation) University of California, Irvine, CA.

Sykes, G. M. (1958). *The society of captives: A study of a maximum security prison*. Princeton, NJ: Princeton University Press.

Sylvia Rivera Law Project. (2007). *"It's war in here": A report on the treatment of transgender and intersex people in New York State men's prisons*. Retrieved from http://archive.srlp.org/resources/pubs/warinhere

Tarzwell, S. (2006–2007). The gender lines are marked with razor wire: Addressing state prison policies and practices for the management of transgender prisoners. *Columbia Human Rights Law Review*, *38*, 167–219.

Tewksbury, R., & Potter, R. H. (2005). Transgender prisoners: A forgotten group. In S. Stojkovic (Ed.), *Managing special populations in jails and prisons* (pp. 15.1–15.14). Kingston, NJ: Civic Research Institute.

Transgender Law Center. (n.d). *Policy recommendations regarding LGBT people in California prisons.* Retrieved from http://transgenderlawcenter.org/issues/prisons/policy-recommendations-regarding-lgbt-people-in-california-prisons

Transgender Law and Policy Institute. (2009). *About us*. Retrieved from http://www.transgenderlaw.org/aboutTLPI.htm

Winter, M. (2011, March 1). Trans-formative change. *Guernica.* Retrieved from http://www.guernicamag.com/interviews/spade_3_1_11/

## Cases Cited

*Battista v. Clarke*, 645 F.3d 449 (1st Cir. 2011).
*Brooks v. Berg*, 270 F. Supp. 2d 302 (N.D. NY 2003).
*Crosby v. Reynolds*, 763 F. Supp. 666 (D. ME. 1991).
*DeBlasio v. Johnson*, 128 F.Supp.2d 315 (E.D. VA. 2000).
*De'Lonta v. Johnson*, 708 F.3d 520 (4th Cir. 2013).
*Farmer v. Brennan*, 511 US 825 (1994).
*Fields v. Smith*, 712 F. Supp. 2d 830 (E.D.Wis. 2010).
*Garfield v. Russell*, 251 Cal.App.2d 275 (1967).
*Giraldo v. California Department of Corrections and Rehabilitation*, 2007 WL 4355775 (2007).
*Greene v. Bowles*, 361 F.3d 290 (6th Cir. 2004).
*Kosilek v. Maloney*, 221 F.Supp.2d 156 (D. MA. 2002).
*Kosilek v. Spencer*, 889 F.Supp.2d 190 (D. Mass. 2012).
*Kosilek v. Spencer*, F.Supp.2d, 2013 WL 204696 (D. Mass. 2013).
*Long v. Nix*, 877 F. Supp. 1358 (S.D. IA. 1995).
*Maggert v. Hanks*, 131 F.3d 670 (7th Cir. 1997).
*Medina-Tejada v. Sacramento County*, 2006 WL 463158 (E.D. Cal. 2006).
*Meriwether v. Faulkner*, 821 F.2d 408 (7th Cir. 1987).
*Murray v. United States Bureau of Prisons*, 1997 WL 34677 (6th Cir. 1997).
*Phillips v. Michigan Department of Corrections*, 731 F.Supp. 792 (W.D. M.I. 1990).
*Star v. Gramley*, 815 F. Supp. 276 (C.D. IL. 1993).
*Stevens v. Knowles*, 2011 WL 7430402 (C.D. Cal. 2011).
*Stevens v. Williams*, 2008 WL 916991 (D. Or. 2008).
*Tates v. Blanas*, 2003 WL 23864868 (E.D. Cal. 2002, 2003).

## Statutes Cited

California Evidence Code § 352.
California's Administrative Procedure Act. Government Code §§ 11340–11359.
California Penal Code § 5058.